

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 10 of 13

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

### **REMARKS**

Claims 1-34 are pending in the application. The Examiner has required restriction between alleged patentably distinct species of the invention, identified by the Examiner as a ratchet attitude adjuster/mounting (claims 3, 10, 15-18, 22, 30, and 33), and a telescopic attitude adjuster/mounting (claims 7, 11, 19, 20, 26, 28, and 34). The Examiner has identified claims 1, 2, 4-6, 8, 9, 12-14, 21, 23-25, 27, 29, 31, and 32 as generic. Applicant provisionally elects the telescopic attitude adjuster/mounting of claims 7, 11, 19, 20, 26, 28, and 34, with traverse.

Claims 3, 10, 15-18, 22, 30, and 33 have been cancelled without prejudice. Claim 19 has been amended to change its dependency from cancelled claim 18 to claim 14. Claims 35-41 have been added. Claims 1, 2, 4-9, 11-14, 20, 21, 23-29, 31, 32, and 34 remain unamended. Applicant submits that claims 1, 2, 4-9, 11-14, 19-21, 23-29, 31, 32, and 34-41 are allowable. Reconsideration and reexamination of the application is respectfully requested.

### **Restriction Requirement**

The Examiner has required restriction between an alleged first species, which comprises a frame-like generally horizontal platform having a first member for engaging a tree at a first height, a second member for engaging the tree at a second height, and a ratchet attitude adjuster for adjusting the horizontal attitude of the platform relative to the tree, and an alleged second species, which comprises a frame-like generally horizontal platform having a first member for engaging the tree at a first height, a second member for engaging the tree at a second height, and a telescopic attitude adjuster for adjusting the horizontal attitude of the platform relative to the tree. The restriction requirement is respectfully traversed as being improper.

The alleged species have the unifying concept of a frame-like generally horizontal platform having a first member for engaging the tree at a first height, a second member for

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 11 of 13

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

engaging the tree at a second height, and an attitude adjuster for adjusting the horizontal attitude of the platform relative to the tree, and are not independent and distinct. Restriction may be required if two or more "independent and distinct" inventions are claimed in one application. 35 U.S.C. §121. According to the Manual of Patent Examination Procedure §802.01, "independent" means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect. "Distinct" means that two or more subjects as disclosed are related, for example, as a combination and a part or subcombination thereof, a process and an apparatus for its practice, a process and a product made, etc., but are capable of separate manufacture, use, or sale as claimed, and are patentable over each other.

The two alleged species are dependent, not independent, because they both have the same modes of operation, functions, and effects, and are therefore related. The two alleged species have the same basic configuration with the same members forming the platform, suspending arms, and attitude adjustment elements. The only difference between the platforms is in the attitude adjuster, which adjusts the attitude of the platform in the same general way. The basic structure of the frames is the same in either case.

The alleged species are not distinct because they are not capable of separate manufacture, use, or sale as claimed. The two species comprise platforms that are essentially identical. The alleged species may have different mechanisms for adjusting the attitude of the platform, but the basic structure is the same, i.e. a frame-like generally horizontal platform having a first member for engaging a tree at a first height, a second member for engaging the tree at a second height, and an attitude adjuster for adjusting the horizontal attitude of the platform relative to the tree.

Furthermore, a search of the prior art would not be duplicative and Applicant is at a loss as to how the Examiner would be burdened by having to examine all the groups of claims since they relate to such intertwined subject matter. However, Applicant confirms a provisional election with traverse of the alleged species of claims 7, 11, 19, 20, 26, 28, and 34.

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 12 of 13

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

### Election of Species

Applicant provisionally elects the alleged species of claims 7, 11, 19, 20, 26, 28, and 34, with traverse.

As the Examiner is undoubtedly aware, 37 CFR 1.141 (a) states:

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

See, also, Manual of Patent Examining Procedure, §§806.04(a), 806.04(h). The Examiner has identified claims 1-8, 11-20, 22-33, 35-40, 43-49, 55-57, and 70-79 as generic. As the Examiner is also undoubtedly aware, MPEP §809.02(c) states:

(B) When a generic claim is subsequently found to be allowable, and not more than a reasonable number of additional species are claimed, treatment shall be as follows:

(1) When all claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that **claims drawn to the nonelected species are no longer withdrawn** since they are fully embraced by the allowed generic claim. (Emphasis added.)

Upon the allowance of one of the generic claims, Applicant will be entitled to consideration of dependent claims 3, 10, 15-18, 22, 30, and 33 as drawn to a species which is non-elected as a result of the restriction requirement. See, 37 CFR 1.146, and Manual of Patent Examining Procedure, §809.02(a).

Serial No. 10/604,435  
Filed: July 21, 2003  
Page 13 of 13

Examiner: Hugh B. Thompson  
Group Art Unit: 3634

CONCLUSION

If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues. Early notification of allowability is respectfully requested.

Respectfully submitted,

AUSTIN POOLE

Dated: March 9, 2005

By: 

G. Thomas Williams, Reg. No. 42,228  
Michael F. Kelly, Reg. No. 50, 859  
McGARRY BAIR PC  
171 Monroe Avenue, NW, Suite 600  
Grand Rapids, Michigan 49503  
616-742-3500

G0160168